



**U.S. Department of Justice**

*Office of the United States Trustee  
District of South Carolina*

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**OPERATING GUIDELINES AND REPORTING REQUIREMENTS  
OF THE UNITED STATES TRUSTEE  
(Effective 10/1/2013)**

**FOR CHAPTER 11 DEBTORS-IN-POSSESSION**

**United States Trustee's Authority to Supervise the Debtor-In-Possession**

The United States Trustee (the UST) is a component of the United States Department of Justice and is charged with many supervisory and administrative responsibilities in cases filed under the Bankruptcy Code. Pursuant to 28 U.S.C. § 586 and 11 U.S.C. § 704(a)(8)<sup>1</sup>, the UST has established these **Operating Guidelines and Reporting Requirements** (the guidelines) for chapter 11 debtors-in-possession (the debtor or debtors). Under these guidelines, debtors must establish and follow certain operating procedures and file certain financial reports with the Bankruptcy Court, and provide copies to the UST<sup>2</sup>, any creditors committee appointed in the case by the UST, and any other party as required by the Court. Counsel should carefully review these requirements with the debtor upon receipt.

**Compliance, Amendments or Modifications**

Timely compliance with each of the requirements contained herein is mandatory. Failure to comply with any requirement may result in the dismissal of the case or conversion of the case to chapter 7 pursuant to the provisions of 11 U.S.C. § 1112(b), the appointment of a chapter 11 trustee or examiner under 11 U.S.C. § 1104, or the imposition of sanctions.

Any request to amend or modify these requirements for a particular chapter 11 case must be made in writing to the UST and approval is effective only if in writing.

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<sup>1</sup> 11 U.S.C. § 704(a)(8) is made applicable to a chapter 11 debtor by 11 U.S.C. §§ 1106(a)(1) and 1107(a).

<sup>2</sup> All documents filed with the Court are provided to the UST electronically. With a few exceptions, debtors are not required to serve documents on the UST.

## **Duties of the Debtor**

With the filing of a chapter 11 petition, a debtor has new duties and is often called a debtor-in-possession. The debtor has fiduciary and statutory responsibilities to preserve and maintain the estate and to operate its business as efficiently as possible in order to maximize ultimate payments on pre-petition debts while keeping post-petition obligations current. *See* 11 U.S.C. §§ 1106 and 1107. The debtor is required to comply in all respects with the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, and Local Rules.

Bankruptcy law allows you to operate your business in its ordinary course. Some business actions, however, require specific Court authorization, including the following:

- Using "cash collateral" (cash, receivables, proceeds subject to liens) (*See* 11 U.S.C. § 363; Federal Rule of Bankruptcy Procedure 4001)
- Employing or compensating an attorney, accountant, or other professional. (*See* 11 U.S.C. § 327 and § 330 and Federal Rule of Bankruptcy Procedure 2014)
- Paying pre-petition unsecured debts
- Borrowing money
- Selling assets outside the ordinary course of business

It is the debtor's responsibility to notify the UST and Bankruptcy Court through CM/ECF of any change of address within 10 days after the change. The debtor should notify the UST in writing if there is a change to their telephone number.

The debtor's schedules, statements and other documents must be filed within 14 days after the filing of a voluntary petition for relief. (Federal Rule of Bankruptcy Procedure 1007(c)). Local Rule 1017-2 provides that a case may be dismissed without further notice or hearing for failure to file these documents timely.

The list of 20 largest unsecured creditors must provide the telephone numbers, e-mail, and fax numbers of those creditors along with the information required by Federal Rule of Bankruptcy Procedure 1007(d).

## **Initial debtor interview**

The UST will schedule an Initial Debtor Interview (IDI) with the debtor and counsel shortly after the case is filed. (*See* 11 U.S.C. § 1116(2) for specific requirements in small business cases.) The IDI will generally be telephonically, unless the UST instructs the parties otherwise, and the debtor and counsel should provide the UST with a call-in number for the telephonic conference. At the IDI, an attorney or other representative from the office of the UST will seek to become familiar with the debtor's case as well as with the debtor's business plan and operations, assets, liabilities, and accounting methods. The UST's representative will also discuss the role of the UST, explain the guidelines, and discuss scheduling matters. The debtor's representative(s) at the IDI must have personal knowledge and information regarding the debtor's pre-petition and post-petition operations, accounting records, tax returns and financial statements.

The IDI will be held within 30 days after the petition is filed and prior to the meeting of creditors. Failure by the debtor to attend meetings reasonably requested by the UST is cause for conversion or dismissal of the bankruptcy case. *See* 11 U.S.C. § 1112(b)(4)(H).

At least one business day prior to the scheduled IDI, and in no event later than 14 days after the petition is filed, the Debtor should provide the UST with the following documents:

- Completed Information for Initial Debtor Interview (a copy of which is attached hereto)
- Executed Initial Debtor in Possession Report
- Receipt and Certification of Understanding Operating Guidelines
- Copies of tax returns and all applicable schedules for previous two years
- Most recent audited or unaudited financial statement (business cases only)
- Balance sheet as of date of filing (business cases only)
- Initial six-month income and expense projections (business cases only)
- Information regarding rent roll (if applicable) set forth below in "Rental Property Records"

## **Meeting of Creditors**

A meeting of creditors will generally be held within 25 to 60 days after the petition is filed. The debtor or one of the debtor's officers, directors, senior management personnel, or general partners as well as the debtor's attorney must attend and respond, under oath, to questions from the UST and creditors regarding the debtor's business and financial affairs, the cause of the bankruptcy, and the status of the debtor's reorganization efforts. *See* 11 U.S.C. §§ 341 and 343. Failure by the debtor to attend the meeting of creditors without good cause shown is cause for conversion or dismissal of the case. *See* 11 U.S.C. § 1112(b)(4)(G) and Local Rule 1017-2(b).

## **Debtor's Books and Records**

Upon filing of the case the debtor must immediately close the debtor's existing financial books and records and open new books and records. The debtor must keep proper records of the debtor's earnings, expenses, receipts, disbursements, and all obligations incurred and transactions made in the operation of the business and in the management, preservation and protection of the debtor's property. The old books and records must be retained and be available to the UST.

## **Bank Accounts/Money of the Estate**

Upon filing of the case, the debtor must immediately close pre-petition bank accounts and open new "Debtor-in-Possession" bank accounts. All receipts must flow through the debtor-in-possession account(s). All disbursements should be by check or debit transaction. Operating without a bank account is not permitted.

The account name on the bank's records must include the words "Debtor-in-Possession." Checks for the new accounts must be pre-numbered by the printer, and must be imprinted with the words "Debtor-in-Possession." Handwritten, typewritten, or hand-stamped versions are not acceptable.

All money of the estate must be deposited or invested in accordance with 11 U.S.C. § 345. Examples of deposits and investments that comply with § 345(b) include, but may not be limited to, the following:

1. Deposits that are fully insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.
2. Investments in United States Treasury securities.
3. Deposits and investments with an entity that has posted a surety bond in favor of the United States, or pledged securities of the kind specified in 31 U.S.C. § 9303, to secure the funds invested or on deposit.

Generally, the UST will ensure that a debtor establishes three accounts: (a) a general expense account, (b) a payroll account, and (c) a tax escrow account. A determination regarding the number and type of authorized accounts will depend on the nature of the debtor's financial activity. Unless otherwise authorized in writing by the UST or the bankruptcy court, the categories of debtors and their authorized accounts are as follows:

- Individuals/non-business debtors are authorized to establish: a general account for ordinary disbursements/expenses, and, in the event estate property is sold, an escrow account to deposit proceeds resulting from the sale of estate property.
- Individuals/business debtors who receive income from sources other than employment and interest (e.g., from rental property) are authorized to establish: a general account; a cash collateral account, if applicable; and other accounts, if applicable.

- Single asset/non-operating debtors are authorized to establish: a general account for ordinary disbursements/expenses; a tax escrow account for real property taxes; and, in the event estate property is sold, an escrow account to deposit proceeds resulting from the sale of estate property.
- Corporations/operating partnerships/proprietorships are authorized to establish: an operating account; a tax escrow account; an escrow account; a cash collateral account, if applicable; and a credit card account, if applicable.

All tax-related funds required to be escrowed under state or federal law should be deposited in the tax escrow account. Trust funds may be disbursed only for the purpose for which they are set aside.

The attached Bank Account Report must be provided to the UST for each account before the original date set for the meeting of creditors. Verification that all pre-petition accounts have been closed shall be required in the form of the “Declaration of Pre-Petition Account Closings and Opening of Debtor In Possession Bank Accounts” attached hereto.

### **Authorized Depositories**

The UST maintains a list of financial institutions which are unable or unwilling to comply with the UST's requirements and 11 U.S.C. § 345 concerning collateralization of bankruptcy estate funds. A listing of all “Non-Complying Institutions” is provided at our website at [http://www.justice.gov/ust/r04/reg\\_info.htm](http://www.justice.gov/ust/r04/reg_info.htm). The debtor-in-possession is prohibited from maintaining accounts or opening new accounts with these institutions.

The UST also maintains a list of financial institutions which have entered into an agreement with the UST pledging compliance with the above-referenced requirements. This listing of “Complying Institutions” is also provided at [http://www.justice.gov/ust/r04/reg\\_info.htm](http://www.justice.gov/ust/r04/reg_info.htm). The debtor-in-possession is encouraged to establish accounts with these institutions, if feasible.

If the debtor-in-possession prefers to use a financial institution which is not included in the complying or non-complying lists, the UST will attempt to establish an agreement with that institution. Should the institution decline, the debtor-in-possession would be required to remove all funds and deposit them with another financial institution and bear any costs associated with the transfer.

### **Insurance**

The debtor must maintain without interruption all insurance customarily carried in the debtor's line of business or required by law or regulation. In most cases, the debtor will be required to carry liability, workers' compensation, and property insurance, (i.e., fire and extended coverage). The property insurance coverage must be for no less than the fair market value or replacement cost of the insured assets. The debtor must immediately notify the UST of

any lapse, cancellation, modification, or renewal of insurance coverage. Failure by the debtor to maintain appropriate insurance that poses a risk to the estate or to the public is cause for conversion or dismissal of the case. *See* 11 U.S.C. § 1112(b)(4)(C).

Before the original date set for the meeting of creditors, the debtor must submit to the UST an insurance report, in the form attached hereto, for each policy owned by the debtor. All reports must be submitted using the form attached. If the debtor has no insurance coverage, the debtor must submit a written statement to the UST so stating. Failure to provide this form to the UST in a timely manner may result in dismissal of the case or conversion of the case to chapter 7.

Insurance coverage must be kept current throughout the Chapter 11 case. Additional reports of insurance coverage are required each time a renewal, change, or lapse of coverage occurs.

### **Rental Property Records**

Debtors who own commercial or residential rental property shall provide the United States Trustee with a rent roll as of the petition date. The rent roll shall consist of (1) a description of each property owned, (2) rental price of each unit, (3) security or other deposits held, (4) occupancy and payment status of each unit, (6) name, address, and phone number of the management company, if any, and (6) the monthly management fee.

### **Quarterly Fees Paid to the UST**

Title 11 U.S.C. § 1930(a)(6) requires that in addition to the filing fee which is paid to the Court, a quarterly fee must be paid to the UST for each quarter (including any fraction of a quarter the debtor is under Chapter 11 protection) until the case is closed, dismissed, or converted to another chapter. The quarterly fee is based on the amount of disbursements made by the debtor during the quarter with a minimum fee of \$325.00 and a maximum fee of \$30,000.00 per quarter. The complete current quarterly fee schedule is attached to the guidelines.

Quarterly fee statements are mailed to the debtor by the UST at the end of each quarter with instructions on how to determine the fee and make proper payment of the fee. The fee is due on the last day of the calendar month following the calendar quarter for which the fee is incurred. Any debtor not receiving a statement for the fee or having questions about the fee should contact the UST's office. Failure to timely pay quarterly fees may result in dismissal of the case or conversion of the case to chapter 7. *See* 11 U.S.C. § 1112(b)(4)(K).

Interest is charged on delinquent fees. *See* 31 U.S.C. § 3717.

The current addresses for Chapter 11 quarterly fee payments are:

Regular mail delivery:	U. S. Trustee Payment Center Post Office Box 530202
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Atlanta, GA 30353-0202

Overnight delivery only: U. S. Trustee Payment Center  
Post Office Box 530202  
1075 Loop Road (2<sup>nd</sup> Floor)  
Atlanta, GA 30337-06086

Payments sent to the above addresses **must be** accompanied by the Quarterly Fee Payment Stub that is found at the bottom of the Quarterly Fee Statement. Failure to enclose the payment stub may result in the improper processing of the payment and cause delay in crediting the debtor's account. The addresses above are only for use in sending payments. Do not include any extraneous material or correspondence with the payment. Extraneous materials sent to the payment addresses will be destroyed.

### **Notice to Debtors Making Payment by Check**

If you send us a check, it will be converted into an electronic funds transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours, and will be shown on your regular account statement.

You will not receive your original check back. We will destroy your original check, but we will keep the copy of it. If the EFT cannot be processed for technical reasons, you authorize us to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, we may try to make the transfer up to 2 times.

### **FEE SCHEDULE**

<b><u>Total Quarterly Disbursements</u></b>	<b><u>Quarterly Fee</u></b>
\$0 to \$14,999.99	\$325
\$15,000 to \$74,999.99	\$650
\$75,000 to \$149,999.99	\$975
\$150,000 to \$224,999.99	\$1,625
\$225,000 to \$299,999.99	\$1,950
\$300,000 to \$999,999.99	\$4,875
\$1,000,000 to \$1,999,999.99	\$6,500
\$2,000,000 to \$2,999,999.99	\$9,750
\$3,000,000 to \$4,999,999.99	\$10,400
\$5,000,000 to \$14,999,999.99	\$13,000
\$15,000,000 to \$29,999,999.99	\$20,000
\$30,000,000 or more	\$30,000

## NOTICE

### **DISCLOSURE OF INTENT TO USE TAXPAYER IDENTIFYING NUMBER FOR THE PURPOSE OF COLLECTING AND REPORTING DELINQUENT QUARTERLY FEES OWED TO THE UNITED STATES TRUSTEE PURSUANT TO 28 U.S.C. § 1930(a)(6)**

Pursuant to the Debt Collection Improvements Act of 1996, Public Law 104-134, Title III, § 31001(i)(3)(A), 110 Stat. 1321-365, codified at 31 U.S.C. § 3701, the UST intends to use the debtor's Taxpayer Identifying Number ("TIN") as reported by the debtor or debtor's counsel in connection with the chapter 11 bankruptcy proceedings for the purpose of collecting and reporting on any delinquent debt, including chapter 11 quarterly fees, that are owed to the UST.

The UST will provide the debtor's TIN to the Department of Treasury for its use in attempting to collect overdue debts. Treasury may take the following steps: (1) submit the debt to the Internal Revenue Service Offset Program so that the amount owed may be deducted from any payment made by the federal government to the debtor, including but not limited to tax refunds; (2) report the delinquency to credit reporting agencies; (3) send collection notices to the debtor; (4) engage private collection agencies to collect the debt; and (5) engage the United States Attorney's office to sue for collection. Collection costs will be added to the total amount of the debt.

#### **Taxes**

The debtor must remain current on the payment of all post-petition federal, state, and local taxes and file all tax returns on a timely basis. If the debtor has payroll tax obligations, the debtor may be required to open a special tax account and report payroll tax deposits to the appropriate taxing authority. Failure by the debtor to timely pay post-petition taxes or to file post-petition tax returns is cause for conversion or dismissal of the case. *See* 11 U.S.C. § 1112(b)(4)(I). Prior to the meeting of creditors, the debtor shall provide the UST with copies of the debtor's federal and state income tax returns for the two years prior to the filing.

#### **Monthly Operating Reports**

All debtors must file with the Court not later than the 20<sup>th</sup> day of each month a written financial report for the entire preceding calendar month. *See* Local Rule 2015-3. This report must be filed in electronic format and must conform to the format prescribed by these guidelines. There are three monthly operating reports forms, copies of which are available at the UST website at [http://www.justice.gov/ust/r04/reg\\_info.htm](http://www.justice.gov/ust/r04/reg_info.htm). Debtors must complete the correct form based on the following criteria:

1. Debtors in cases in which the debtor is a "small business debtor" pursuant to the definitions set forth in 11 U.S.C. § 101 (51) must use the Official Form B 25C monthly report, a copy of which is provided at the UST website and designated as **MOR Form 1**.



2. Non-small business debtors who generally report their financial activity on a cash basis or who generally report on an accrual basis must use the “Monthly Operating Report for Business Debtors”, a copy of which is provided at the UST website and designated as **MOR Form 2**. Required forms and documents to be included in each report will be determined by the UST at the Initial Debtor Interview and verified in writing prior to the submission of the first report.
3. Individual debtors must use the “Monthly Operating Report for Individual Debtors”, a copy of which is provided at the UST website and designated as **MOR Form 3**.

Debtors should provide their reports to their attorneys early enough to allow for filing in electronic format by the 20<sup>th</sup> day of the month. Failure to file these reports with the Court in a timely manner may result in dismissal of the case or conversion of the case to chapter 7. *See* 11 U.S.C. § 1112(b)(4)(F, H).

If the debtor files a bankruptcy petition more than ten days prior to the end of any calendar month, a monthly report must be filed for that portion of the calendar month no later than the 20th day of the following month. A debtor who files ten days or less prior to the end of a calendar month must include these days in the report for the following month. A debtor should not file a monthly report which covers a period exceeding 41 days.

### **Other Periodic Reports**

A chapter 11 debtor must also file periodic financial reports using Official Form B 26 to report the value, operations, and profitability of each entity in which the debtor has a substantial or controlling interest unless the entity is publically traded or also a debtor in bankruptcy. This requirement applies mostly to debtor corporations which control or own at least 20 percent of another entity. *See* Fed. R. Bankr. P. 2015.3. A copy of this form is available at the U. S. Bankruptcy Court’s website at <http://www.uscourts.gov/bkforms/index.html>.

### **Additional Notice Requirements**

The United States Trustee must be advised immediately of any significant change in debtor’s business. Significant changes include, but are not limited to, casualty or theft losses, changes in insurance coverage, or allegations of violations of laws, ordinances, or regulations, including but not limited to the failure to pay taxes, which could affect the continued operation of the debtor’s business.

### **Unsecured Creditors Committee**

The Bankruptcy Code requires the UST to appoint a creditors committee composed of unsecured creditors willing to serve. *See* 11 U.S.C. § 1102. The committee is usually appointed from the list of the 20 largest unsecured creditors submitted with the petition.

Shortly after the filing of the petition, the UST usually invites between ten and twenty of the debtor's largest unsecured creditors to serve on the unsecured creditors committee. Potential

committee members receive information explaining the duties and responsibilities of the creditors committee. If at least three creditors respond affirmatively, the UST may appoint an unsecured creditors committee. The report of selection of the creditors' committee is filed with the Court with copies sent to the debtor, counsel for the debtor, and the members chosen to serve on the committee. If less than three unsecured creditors are willing to serve on a committee, no committee is appointed. In that instance, a report of non-appointment is filed with the Court. Section 1103(d) requires the debtor to meet with the creditors' committee as soon as practicable after the appointment of the committee to transact such business as may be necessary and proper.

Section 1102 authorizes the UST to appoint a committee of other creditors of a common type or class if such appointment is necessary to assure their adequate representation. For example, under certain circumstances, the UST may appoint a committee of timeshare holders, limited partners, or bondholders.

If a committee is appointed in a qualifying small business case, the debtor is no longer considered a small business debtor unless the Court determines that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor.

### **Disclosure Statement and Plan of Reorganization/Liquidation**

The disclosure and plan process is the heart of the reorganization under chapter 11. The debtor is required to file a disclosure statement and plan of reorganization/liquidation within 180 days after the case is filed, except in a statutorily defined small business case or unless otherwise ordered by the Court. Failure to do so may result in dismissal of the case or conversion of the case to chapter 7. *See* 11 U.S.C. § 1112(b)(4)(E, J); Local Rule 3016-1. In single asset real estate cases, unless the debtor has either (a) filed a plan of reorganization that has a reasonable possibility of being confirmed by no later than the date that is 90 days after the petition is filed or 30 days after the court determines that the debtor is subject to this requirement under 11 U.S.C. § 362(d)(3) or (b) has commenced monthly payments, the court may grant a creditor's request for relief from the automatic stay. *See* 11 U.S.C. § 362(d)(3).

A disclosure statement should contain adequate information to allow creditors to make an informed decision as to whether the confirmation of the plan is in their best interests. The disclosure statement should be meaningful and easily understood. While circumstances will vary widely from one chapter 11 case to the next, and, therefore, the parameters of "adequate information" may also vary, the following information is considered to be critical to an evaluation of the adequacy of a disclosure statement.

1. The necessary financial information, data and projections relevant to the creditors' decision to accept or reject the Chapter 11 plan.
2. The assets and liabilities of the business. Provide current balance sheet information and the source of appraisal values.
3. The events leading to the filing of the petition and the financial difficulties of the debtor.

4. The operating condition and success of the debtor while in Chapter 11.
5. An estimate of the return to creditors under a Chapter 7 liquidation (brief liquidation analysis).
6. A list of all claims against the debtor, if practicable, showing the claims to which objections are anticipated and the reasons for the objections. A list of claims to be recognized under the plan.
7. A statement regarding the debtor's compliance with all responsibilities to file tax returns and pay taxes due both pre and post-petition.
8. An analysis of the potential tax consequences to the debtor and other parties-in-interest resulting from the implementation of the plan.
9. The parties responsible for the future management of the debtor (controlling persons), and the rate or amount of compensation to be paid for their services.
10. A detailed estimate of the administrative expenses contemplated under the plan, including, but not limited to, attorneys' fees, accountants' fees and other professional fees and expenses. This includes quarterly fees to the UST.
11. The estimated collectability of the debtor's accounts receivable.
12. The risks posed to creditors under the plan.
13. An analysis of potential preferential or otherwise voidable transfers and the debtor's plan, if any, to pursue such recoveries.
14. Anticipated future litigation (bankruptcy and non-bankruptcy contexts) and the estimated cost and source of revenue to fund this litigation.
15. A statement that the plan represents a legally binding arrangement and should be read in its entirety, as opposed to relying on the summary in the disclosure statement.
16. The designation of impaired classes under the plan. Include a layman's definition of impairment.
17. A statement that approval of the disclosure statement by the Bankruptcy Court does not constitute approval of the plan.
18. Whether any creditors' committee exists and, if so, whether it participated

in negotiating the terms of the plan.

19. An explanation of the voting requirements for acceptance of the plan.

Qualifying small business debtors may use the form plan and disclosure statements known as Official Forms B 25A and B 25B which are available at the U. S. Bankruptcy Court's website at <http://www.uscourts.gov/bkforms/index.html>.

Failure by the debtor to file a disclosure statement and plan of reorganization/liquidation within 180 days after the entry of the order for relief, or 300 days for small business debtors, may result in dismissal of the case or conversion of the case to chapter 7. *See* 11 U.S.C. § 1112(b)(4)(J); Local Rule 3016-1.

If a plan or disclosure statement is not confirmed or approved, any amendment, modification or supplement necessary to correct the deficiency must be filed within 14 days of the hearing or whatever time period the Court may require. *See* Local Rule 3016-1.

### **Additional Requirements and Considerations for Small Business Debtors**

A "small business case" is a case in which the debtor is a "small business debtor" pursuant to the definitions set forth in 11 U.S.C. § 101 (51C) and (51D). 11 U.S.C. § 1116 sets out a number of specific requirements in small business cases:

1. The debtor must append to the voluntary petition its most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return, or a statement made under penalty of perjury that the financial statements have not been prepared or the tax return has not been filed.
2. The debtor must attend, through its senior management personnel and counsel, meetings scheduled by the UST, including an initial debtor interview and the meeting of creditors, unless the Court waives the requirement upon a finding of extraordinary and compelling circumstances.
3. The debtor must timely file all schedules and statements unless the Court grants an extension of time, which shall not extend beyond 30 days after the order for relief absent extraordinary and compelling circumstances.
4. The debtor must file all post-petition financial and other reports required by the Federal Rules of Bankruptcy Procedure or Local Bankruptcy Rules.
5. The debtor must maintain insurance customary and appropriate to the industry, subject to 11 U.S.C. §363(c)(2) concerning use of cash collateral.
6. The debtor must timely file tax returns and other required governmental filings and timely pay all taxes entitled to administrative expense priority, except those

being appropriately and diligently contested, and subject to 11 U.S.C. § 363(c)(2) concerning use of cash collateral.

7. The debtor must allow the UST or a designated representative to inspect the debtor's business premises, books, and records at reasonable times, and after reasonable prior written notice, unless the debtor waives notice.

In a small business case, the Court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary. *See* 11 U.S.C. §1125(f)(1). Presumably, such a determination will be made by the Court upon the request of the debtor. Additionally, in a small business case, the plan and disclosure statement shall be filed not later than 300 days after the date of the order for relief, unless such time period is extended by the Court. *See* 11 U.S.C. § 1121(e).

### **Provisions Specific to Debtors Who Are Individuals**

Title 11 includes a number of provisions that apply specifically to chapter 11 cases in which the debtor is an individual<sup>3</sup>, including the following:

1. Property of the bankruptcy estate includes property acquired post-petition. *See* 11 U.S.C. § 1115(a)(1).
2. Property of the bankruptcy estate includes post-petition earnings from personal services. *See* 11 U.S.C. § 1115(a)(2).
3. The plan must provide for the debtor to pay creditors all or such portion of earnings from personal services or other future income of the debtor as is necessary for the execution of the plan. *See* 11 U.S.C. § 1123(a)(8).
4. If a holder of an allowed unsecured claim objects to confirmation of the plan, the plan must either provide for payment of the full value of the claim as of the effective date, or for payment of the projected disposable income of the debtor for five years or for the term of the plan, whichever is longer. Disposable income is defined in 11 U.S.C. §§ 1325(b)(2), 1129(a)(15).
5. At the request of the debtor, the trustee, the UST, or the holder of an allowed unsecured claim, the plan may be modified at any time after confirmation but before completion of payments to a) increase or reduce the amount of payments to a particular class; b) extend or reduce the time period for payments; or c) change the amount to be paid to a creditor to the extent necessary to take account of any payments made other than under the plan. *See* 11 U.S.C. § 1127(e).
6. At the request of the Court, the UST, or any party in interest, the debtor must file

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<sup>3</sup> Individual debtors may also be small business debtors.

with the Court a copy of any post-petition federal income tax returns at the same time they are filed with the taxing authorities, and certain pre-petition federal income tax returns that had not been filed with the taxing authorities on the petition date. *See* 11 U.S.C. § 521(f).

7. An individual debtor does not receive a discharge until completion of all payments under the plan. The Court may grant a discharge to an individual debtor who has not completed all plan payments if the Court finds that the value of the property actually distributed to unsecured creditors as of the effective date is not less than the amount that would have been paid in a chapter 7 case if the estate had been liquidated on the effective date, and if the Court also finds that modification of the plan under 11 U.S.C. § 1127 is not practicable. *See* 11 U.S.C. § 1141(d)(5); Local Rule 4004-1.
8. An individual debtor owing a “domestic support obligation” as defined at 11 U.S.C. § 101(14A) (alimony, child support, etc.), must provide written notice of the bankruptcy filing to the holder of the obligation and to the appropriate state child support enforcement agency. The initial notices of a debtor’s bankruptcy filing must be sent by the meeting of creditors, and proof of service must be furnished to the UST within ten days. Notification of receiving a bankruptcy discharge should be sent to these same parties after a discharge is obtained. The forms attached to these guidelines should be used to send notices to the appropriate parties.

## INFORMATION FOR INITIAL DEBTOR INTERVIEW

Case Name: \_\_\_\_\_

Case Number: \_\_\_\_\_

Business cases only

Type of business: \_\_\_\_\_

Date Started/Incorporated: \_\_\_\_\_

What is the business accounting method? \_\_\_\_\_

What accounting software, if any, does the business use? \_\_\_\_\_

Specific conditions which caused the Chapter 11 petition to be filed?

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Plan for reorganization or liquidation?

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Who will prepare the monthly operating reports? \_\_\_\_\_

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Have you provided the following to the U.S. Trustee?

\_\_\_ Executed Initial Debtor in Possession Report

\_\_\_ Receipt and Certification of Understanding Operating Guidelines

\_\_\_ Copies of previous two years tax returns and all applicable schedules

\_\_\_ Most recent audited or unaudited financial statement (business cases only)

\_\_\_ Balance sheet as of date of filing (business cases only)

\_\_\_ Initial six-month income and expense projections (business cases only)

\_\_\_ Rent roll information

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

IN RE:

)  
)  
)  
)  
)  
)

Chapter 11  
Case No.

Debtor.

**BANK ACCOUNT REPORT**

A report must be filed for each account or deposit maintained by the debtor or trustee.

NAME OF ACCOUNT:	
ACCOUNT NUMBER:	
NAME OF DEPOSITORY:	
ADDRESS OF DEPOSITORY:	
TELEPHONE OF DEPOSITORY:	
SIGNATORIES:	
TYPE OF ACCOUNT (general, payroll, tax, other. If other, please specify):	

The deposit is fully insured or guaranteed by the United States or a department, agency, or instrumentality of the United States, or backed by the full faith and credit of the United States. The debtor or trustee will notify the United States Trustee immediately if the aggregate deposits at any one financial institution exceed \$250,000.

The debtor hereby authorizes the depository to release to the United States Trustee any information that may be requested pursuant to the United States Trustee's duties under 28 U.S.C. § 586(a)(3), including bank statements and copies of any documents pertaining to the above Debtor-in-Possession accounts.

\_\_\_\_\_  
(Signature of debtor or debtor's principal)  
Name (printed):

Date: \_\_\_\_\_



**DECLARATION OF PREPETITION ACCOUNT CLOSINGS  
AND OPENING OF DEBTOR-IN-POSSESSION BANK ACCOUNTS**

**CASE NAME:** \_\_\_\_\_

**CASE NUMBER:** \_\_\_\_\_

All prepetition bank accounts of \_\_\_\_\_, as listed  
(Debtor)  
below, were closed on \_\_\_\_\_ .  
(Date)

<b>Depository Name</b>	<b>Account Name</b>	<b>Account Number</b>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

On \_\_\_\_\_, all monies were transferred to the following chapter  
(Date)  
11 debtor-in-possession bank accounts:

<b>Depository Name</b>	<b>Account Name</b>	<b>Account Number</b>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Attached is proof that prepetition accounts have been closed and Debtor-In-Possession accounts opened.

**The average post-petition monthly disbursements are estimated to be \$ \_\_\_\_\_ each month.**

**PURSUANT TO 28 U.S.C. SECTION 1746, I DECLARE UNDER PENALTY OF  
PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.**

Executed on: \_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Debtor)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Printed Name of Signatory)

\* Attach additional sheets if necessary.

IN RE: \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 \_\_\_\_\_ ) Chapter 11  
 \_\_\_\_\_ ) Case No.  
 \_\_\_\_\_ )  
 \_\_\_\_\_ )  
 Debtor. \_\_\_\_\_ )

A report must be filed for each insurance policy maintained by the debtor or trustee.

A copy of the policy declaration page is attached as Exhibit "A." The debtor or trustee agrees to maintain this coverage at all times. Proof of any change, renewal or lapse of coverage shall be immediately reported to the United States Trustee using this form.

Telephone Number:

Date: \_\_\_\_\_

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA

In Re: ) Chapter 11  
)  
) Case Number \_\_\_\_\_  
)  
\_\_\_\_\_  
Debtor(s) )

**INITIAL DEBTOR-IN-POSSESSION REPORT**

The debtor-in-possession (DIP or debtor) captioned above acknowledges receipt of the Chapter 11 Debtor Instructions and Requirements and submits the following report.

A. Books and Records

The books and records of the debtor have been closed out as of the date of filing of the petition herein. A new set of books and records has been opened for the debtor-in-possession.

B. Bank Accounts

All pre-petition bank accounts have been closed and new accounts have been opened for the debtor-in-possession: Yes \_\_\_\_\_ No \_\_\_\_\_

C. Insurance Coverage

The debtor has in force or has ordered the following types of insurance which comprise all of the types of insurance normally required for a business of this nature:

Auto and truck \_\_\_\_\_ Liability \_\_\_\_\_ Fire \_\_\_\_\_ Workers Comp. \_\_\_\_\_ Forced Placed \_\_\_\_\_

D. Employee Information

Current number of employees \_\_\_\_\_

Gross monthly payroll: \_\_\_\_\_

Officers, directors and principals \_\_\_\_\_

Other employees \_\_\_\_\_

E. Verification of Initial Notification of Domestic Support Obligation. Attached copies of notifications sent.

All post-petition payroll obligations including payroll taxes are current. Exceptions:

\_\_\_\_\_

Date: \_\_\_\_\_ Signed: \_\_\_\_\_ Title: \_\_\_\_\_

**ALL QUESTIONS ON THE DEBTOR-IN-POSSESSION REPORT MUST BE ANSWERED**

**INITIAL LETTER TO STATE CHILD SUPPORT ENFORCEMENT AGENCY  
REGARDING A CLAIM FOR A DOMESTIC SUPPORT OBLIGATION  
Chapter 11**

[Name of State Agency]  
[Address of State Agency]  
Attn: [Contact person at State Agency]

Re: Support Obligation Owed to [Name of Person Owed Support]  
By [Name of Debtor, Bankruptcy Case No. 05-xxxxx]

Dear [Contact person at State Agency]:

I filed a Chapter 11 case on [Date of Filing] in the United States Bankruptcy Court for the \_\_\_\_\_ District of \_\_\_\_\_. The following person has a claim for support against me:

Name of Holder of Claim:  
Address of Holder of Claim:  
Telephone Number of Holder of Claim:

In addition, please be advised that I have sent [Holder of Claim] a letter which explains that your agency will assist in collecting child support from me.

Finally, if I successfully complete this bankruptcy case and receive a discharge from other debts, I will send you another letter with additional information that may help your agency assist [Name of Holder of Claim] get paid any support still owed.

Sincerely,

Individual Chapter 11 Debtor in Possession

**INITIAL LETTER TO HOLDER OF CLAIM  
FOR A DOMESTIC SUPPORT OBLIGATION  
Chapter 11**

[Name of Person Owed Support]  
[Address of Person Owed Support]

In re: Name of Debtor  
Case No: 05-xxxxx

Dear [Name of Person Owed Support]:

On [Date of Filing] I filed a chapter 11 case in the United States Bankruptcy Court for the \_\_\_\_\_ District of \_\_\_\_\_. I listed you as being owed money for a domestic support obligation. If this domestic support obligation includes child support, you have the right to ask your state child support enforcement agency to assist you in collecting this child support during and after the bankruptcy case. The name, address and telephone number of this agency in your state are listed below:

[Name of Child Support Enforcement Agency]  
[Address of CSEA]  
[Telephone No. of CSEA]

If this letter has reached you, but you have moved to another state, you may wish to visit the internet web site of the Office of the U.S. Trustee at [www.usdoj.gov/ust](http://www.usdoj.gov/ust) for a complete listing of the child support enforcement agencies for all states.

If I successfully complete this bankruptcy case and receive a discharge from other debts, I will send you another letter with additional information that may help you get paid any domestic support obligations you are owed.

Sincerely yours,

Chapter 11 Individual Debtor

**DISCHARGE NOTIFICATION TO  
STATE CHILD SUPPORT ENFORCEMENT AGENCY REGARDING  
A CLAIM FOR A DOMESTIC SUPPORT OBLIGATION  
Chapter 11**

[Name of State Agency]  
[Address of State Agency]  
Attn: [Contact person at State Agency]

Re: Domestic Support Obligation Owed to [Name and Address of Person Owed Support]  
By [Name of Debtor, Bankruptcy Case No. 05-xxxxx]

Dear [Contact Person at State Agency]:

Please be advised that I was granted a discharge in bankruptcy on [Date of Discharge]. The following information is being provided to assist in your efforts to collect any domestic support obligation which I may still owe to [Name of Person Owed Support]:

My Current Address:

My Current Employer:

Address of My Current Employer:

I am obligated to provide you the names and addresses of certain creditors whose debts were reaffirmed or not discharged. These creditors are as follows:

These creditors may be a source of information regarding any future address I may have. If you request information from these creditors, they are allowed by law to disclose to you my last known address.

Sincerely,

Chapter 11 Debtor in Possession

**DISCHARGE NOTIFICATION TO HOLDER OF CLAIM FOR A DOMESTIC  
SUPPORT OBLIGATION  
Chapter 11**

[Name of Holder of Claim]  
[Address of Holder of Claim]

Re: [Name of Debtor]  
[Case No. 05-xxxxx]

Dear [Name of Holder of Claim]:

Please be advised that I was granted a discharge in bankruptcy on [Date of Discharge].  
The following information is being provided to assist in your efforts to collect any support which  
I may still owe you:

My Current Address:

My Current Employer:

Address of My Current Employer:

I am obligated to provide you the names and addresses of certain creditors whose debts  
were reaffirmed or not discharged. These creditors are as follows:

These creditors may be a source of information regarding any future address I may have.  
If you request information from these creditors, they are allowed by law to disclose to you my  
last known address.

Sincerely,

Debtor in Possession (Ch 11)

**RECEIPT AND CERTIFICATION OF UNDERSTANDING  
UNITED STATES TRUSTEE  
OPERATING GUIDELINES AND REPORTING REQUIREMENTS**

**CASE NAME:** \_\_\_\_\_

**CASE NUMBER:** \_\_\_\_\_

I hereby certify that I have read and understand the United States Trustee Chapter 11 "Operating Guidelines and Reporting Requirements for Debtors in Possession and Trustees". Further, I hereby agree to perform in accordance with said guidelines and requirements.

_____ (Date)	_____ (Debtor)
	_____ (Title)
	_____ (Printed Name of Signatory)

The undersigned, as counsel for the debtor, has read and reviewed with the debtor the operating guidelines and reporting requirements discussed above.

_____ (Date)	_____ (Attorney for Debtor)
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